

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 GLOBE IMPORTS LIMITED, INC.,  
5 GLOBE PROPERTIES, and ROBERT  
MAXON,

No. C 14-3676 CW

FINDINGS OF FACT  
AND CONCLUSIONS OF  
LAW AFTER BENCH  
TRIAL

6 Plaintiffs,

7 v.

8 ALLIED PROPERTY AND CASUALTY  
9 INSURANCE CO. and NATIONWIDE  
INSURANCE,

10 Defendants.

11 \_\_\_\_\_ /  
12  
13 A fire damaged two buildings and destroyed a third. All  
14 three buildings are owned by Plaintiff Globe Imports Limited, a  
15 division of which is Plaintiff Globe Properties. Docket No. 63,  
16 Joint Pretrial Conference Statement (JPCS) at 1.<sup>1</sup> At the time,  
17 Plaintiffs held a commercial property insurance policy with  
18 Defendant Nationwide Mutual Insurance Company.<sup>2</sup> The parties  
19 dispute coverage for many of the costs related to repair and  
20 replacement of these buildings.

21 For the bench trial in this matter, the Court instructed the  
22 parties to offer their direct testimony through the designation of  
23 declarations and deposition transcripts. The parties have filed  
24 trial briefs with these declarations, deposition transcripts and

25 \_\_\_\_\_  
26 <sup>1</sup> All citations to the JPCS are to undisputed facts.

27 <sup>2</sup> Claims against the other named defendant, Allied Property  
and Casualty Insurance Company, were dismissed by stipulation.  
Docket No. 32.

1 documentary evidence and also include citations to the material  
2 that they submitted previously with the earlier motions. The  
3 parties were given the opportunity to cross-examine witnesses  
4 during the bench trial. The parties also filed post-trial briefs  
5 and written closing arguments.

6 Nationwide objects to some of the evidence submitted by  
7 Globe. The Court has reviewed these evidentiary objections and  
8 has not relied on any inadmissible evidence. The Court will not  
9 discuss each objection individually. To the extent that the Court  
10 has relied on evidence to which one side has objected, such  
11 evidence has been found admissible and the objections are  
12 overruled.

13 The Court now enters its findings of fact and conclusions of  
14 law.

15 BACKGROUND FINDINGS OF FACT

16 On December 8, 2006, a fire in Eureka, California damaged two  
17 buildings and destroyed a third building owned by Globe. JPCS at  
18 1. One of the damaged buildings, Building 1, was located at 527,  
19 531 and 535 Third Street. Id. at 2. The other damaged building,  
20 Building 3, was located at 526 Opera Alley. Id. Building 2, the  
21 destroyed building, was located at 224, 226 and 236 G. Street.  
22 Id.

23 I. Buildings

24 Building 2 comprised a first floor used as a meat market, a  
25 second floor originally used as a dance hall with a sprung dance  
26 floor and a mezzanine area above the second floor. Docket No. 68,  
27 Maxon Dec. in Opp. ¶ 6; Transcript at 27:17-28:4. The stairway  
28 leading to the second floor had two landings. Maxon Dec. in Opp.

¶ 7. It was lined with ornate wainscot and heavy trims and finishes. Id. Heavy trim and wainscot were also prevalent at the top of the stairway, in the foyer and in adjacent dressing rooms with showers and bathrooms. Id. ¶¶ 7-8. The foyer opened into the dance hall, which was 3,516 square feet. Id. ¶ 9. The dance hall was surrounded by ornate framed plaster arches, wainscot, heavy trim and ornate plaster walls with large double hung windows. Id.; see also Ex. 56 at 7, 11. Three staircases led up to the mezzanine level, which comprised a balcony to observe the dance floor. Maxon Dec. in Opp. ¶ 10; see also Ex. 56 at 6. Building 2 was constructed using substantial amounts of old growth redwood. Docket No. 59, Penfold Dec. ¶ 9.

Repairs have been performed on Buildings 1 and 3, but Building 2's reconstruction has not yet begun. A "different building" is going to take the place of Building 2. Transcript at 27:12-14. Instead of two stories and a mezzanine, there will be three stories. Id. at 27:15-28:16. The new building will differ from the old in other ways. It will use drywall instead of lath and plaster. Id. at 29:1-3. Further, it will use a concrete mat slab, which means there will not be any redwood base beneath it, id. at 29:4-16, and there will be no redwood sheathing on the inside of the exterior or interior walls, Depo. Desig., Ex. A at 113:15-20. The new building will also have steel framing, which Building 2 did not have. Id. at 112:23-25, 113:22-25. Using the steel will "deliver the same sense of quality, the esthetics, sound deadening, all those things." Id. at 114:5-7.

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1       II. Contract

2               Nationwide and Globe entered into a commercial property  
3 insurance contract for the period January 1, 2006 to January 1,  
4 2007. JPCS at 2. Under the Commercial Property Statement of  
5 Values, the contract contains a blanketed \$4,501,700 limit. Id.  
6 Buildings 1 and 2 together are assigned a \$1,775,300 value.  
7 Building 3 is assigned a \$98,200 value. Id. The general coverage  
8 provisions are as follows:

9       A. Coverage

10              We [Nationwide] will pay for direct physical loss of or  
11 damage to Covered Property at the premises described in the  
12 Declarations caused by or resulting from any Covered Cause of  
13 Loss.

14       1. Covered Property

15              Covered Property, as used in this Coverage Part, means the  
16 type of property described in this Section A.1., and  
17 limited in A.2., Property Not Covered, if a Limit of  
18 Insurance is shown in the declarations for that type of  
19 property.

20              a. Building, meaning the building or structure described in  
21 the Declarations . . .  
22              . . .

23       2. Property Not Covered

24              Covered Property does not include:  
25              . . .  
26              d. [W]alks, patios or other paved surfaces;  
27              . . .  
28              f. The cost of excavations, grading, backfilling or  
filling;

g. Foundations of buildings, structures, machinery or  
boilers if their foundations are below:  
1) The lowest basement floor; or  
2) The surface of the ground, if there is no basement;

h. Land (including the land on which the property is  
located)

i. Underground pipes, flues or drains;  
j. . .

25       Id. at 2-3. The contract provides that Nationwide "will determine  
26 the value of the Covered Property in the event of loss or damage"  
27 at "actual cash value." JPCS at 3. "Actual Cash Value" is  
28 defined as follows:

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of the like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of Covered Property regardless of whether the property has sustained partial or total loss or damage.

Globe purchased optional replacement cost coverage under the insurance contract. Id. at 2. The contract states:

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

. . .  
3. Replacement Cost

a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.

. . .  
d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
- (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

. . .  
(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:

(1) The Limit of Insurance Applicable to the lost or damaged property;

(2) The cost to replace the lost or damaged property with other property:

a. Of comparable material and quality; and

b. Used for the same purpose; or

(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

f. The cost to repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

Id. at 3-4.

The contract includes coverage for increased costs of construction in the Additional Coverages provisions:

- 1                   e. Increased Cost of Construction
- 2                   (1) This Additional Coverage applies only to buildings  
3                   to which the Replacement Cost Optional Coverage applies.
- 4                   (2) In the event of damage by a Covered Cause of Loss  
5                   to a building that is Covered Property, we will pay the  
6                   increased cost incurred to comply with enforcement of an  
7                   ordinance or law in the course of repair, rebuilding or  
8                   replacement of damaged parts of that property, subject  
9                   to the limitations stated in e.(3) through e.(9) of this  
10                  Additional Coverage.
- 11                  (3) The ordinance or law referred to in e.(2) of this  
12                  Additional Coverage is an ordinance or law that  
13                  regulates the construction or repair of buildings or  
14                  establishes zoning or land use requirements at the  
15                  described premises, and is in force at the time of loss.
- 16                  . . .
- 17                  (6) . . . If a damaged building is covered under a  
18                  blanket Limit of Insurance which applies to more than  
19                  one building or item of property, . . . the most we  
20                  will pay under this Additional Coverage, for the  
21                  damaged building, is the lesser of \$10,000 or 5%  
22                  times the value of the damaged building as of the  
23                  time of loss times the applicable coinsurance  
24                  percentage.  
25                  This amount payable under this Additional Coverage is  
26                  additional insurance.
- 27                  (7) With respect to this additional coverage;  
28                  (a) We will not pay for the Increased Cost of  
                    Construction:  
29                   i. Until the property is actually repaired or  
30                   replaced, at the same or another premises; and  
31                   ii. Unless the repairs or replacement are  
32                   made as soon as reasonably possible after the  
33                   loss or damage, not to exceed two years. We  
34                   may extend this period in writing during the  
35                   two years.  
36                  . . .
- 37                  (8) This Additional Coverage is not subject to the terms  
38                  of the Ordinance or Law Exclusion, to the extent that  
39                  such Exclusion would conflict with the provisions of  
40                  this Additional Coverage.

22                  Id. at 5-6.

23                  To date, Nationwide has paid \$1,609,242 toward repairing  
24                  Buildings 1 and 3 and for the actual cash value of Building 2.

25                  Id. at 6. Nationwide paid Globe an additional \$93,347 for  
26                  demolition, debris removal, fencing and security, bringing the  
27                  total payment to \$1,702,589. Id. It held back \$92,035 from its

1 payment to Globe pursuant to contract provisions that require  
2 actual replacement of the building. Id.

3 STANDARD OF REVIEW AND CONCLUSIONS OF LAW

4 "The burden is on an insured to establish that the occurrence  
5 forming the basis of its claim is within the basic scope of  
6 insurance coverage." Aydin Corp. v. First State Ins. Co., 18 Cal.  
7 4th 1183, 1188 (1998). However, an insurer bears the burden of  
8 showing that a policy exception or exclusion applies. See, e.g.,  
9 Clemmer v. Hartford Ins. Co., 22 Cal. 3d 865, 880 (1978) (stating  
10 that the "burden of bringing itself within any exculpatory clause  
11 contained in the policy is on the insurer"); Prichard v. Liberty  
12 Mut. Ins. Co., 84 Cal. App. 4th 890, 910 (2000) ("The insurer has  
13 the burden of establishing the applicability of an exclusion.").

14 "Replacement cost is the estimated cost to construct, at  
15 current prices, a building with utility equivalent to the building  
16 being appraised, using modern materials and current standards,  
17 design, and layout." Fire Ins. Exchange v. Super. Ct., 116 Cal.  
18 App. 4th 446, 468 (2004).

19 FINDINGS OF FACT

20 The parties dispute several costs related to each of the  
21 three buildings.

22 I. Building 1

23 On December 10, 2007, Globe submitted to Nationwide a claim  
24 for \$373,928 for repairs it had completed on Building 1. Ex. 1.  
25 The parties agree that \$35,497 of the \$373,928 was not covered  
26 under the Contract. Globe also claims that it is owed \$86,690 for  
27 Robert Maxon's work as a Project Manager. The Court discusses  
28

1 each disputed cost enumerated in the parties' Disputed Items Chart  
2 (Chart) below. Docket No. 102.

3 a. Gas Relocation Service

4 Globe submitted for reimbursement a cost of \$2,824 for "GAS  
5 SERVICE RELOCATION/REARRANGEMENT COSTS." Ex. 1 at 3. Pacific Gas  
6 & Electric's invoice for this service was dated May 11, 2007. Id.  
7 The Court finds that this service relates to Unit 535, within  
8 Building 1, which had gas lines in it before the fire. Ex. 1 at  
9 64; Transcript at 364:12-16. The fire destroyed that gas line.  
10 Id. at 365:3-12. Although Nationwide argues that this cost  
11 related to adding a gas line to a different unit, the Court finds  
12 Globe's evidence and testimony more clear and credible.

13 The Court finds that Globe is entitled to the cost of the gas  
14 relocation service because the loss of gas to Unit 535 was caused  
15 by the fire. See JPCS at 2.

16 b. Gas Line Installation

17 Globe had a gas line installed that serviced Building 1 and  
18 Building 3. The installation cost \$5,666; that cost is divided in  
19 half between the two buildings. See Ex. 1 at 79. The work  
20 associated with this cost was two-thirds trenching and one-third  
21 gas piping installation. Transcript at 13:6-14:6; Ex. 1 at 80-82.

22 The Court finds that Globe is not entitled to two-thirds of  
23 this amount because trenching, a form of excavation, is not  
24 covered under the contract. See JPCS at 3. It is, however,  
25 entitled to \$944, the other third of the \$2,788 attributable to  
26 Building 1.

27 //

28 //

## 1                   c. Re-Route Electrical

2                   The fire destroyed electrical service to Building 1.  
3 Transcript at 225:18-21. The parties stipulated at trial that  
4 much of the repair cost is excluded as excavation. Id. at 232:20-  
5 25. The remaining costs, amounting to \$1,287, were for materials,  
6 namely underground piping, fittings, couplers, connectors and sand  
7 backfill. See id. at 233:3-11. These costs fall under the  
8 coverage exceptions for backfilling and underground pipes. See  
9 JPSC at 3. Therefore, Globe is not entitled to any of these  
10 costs.

## 11                  d. Power from Transformer

12                  Before the fire, Buildings 1 and 3 combined received 600 amps  
13 of electrical power. Transcript at 15:7-16, 225:22-226:3. The  
14 Court finds the evidence supporting Nationwide's theory that  
15 Building 1 and Building 3 had 300 amps combined before the fire  
16 less credible than Globe's. Because the fire destroyed electrical  
17 service to Buildings 1 and 3, Kneaper Electric installed a 600-amp  
18 pull can, a 200-amp meter and a 100-amp meter that would service  
19 both buildings. Ex. 1 at 83; Transcript at 14:20-25, 15:5-6.  
20 Kneaper's services cost \$12,804. Ex. 1 at 83.

21                  Because Kneaper replaced property that was damaged, rather  
22 than adding increased electrical power, Globe is entitled to this  
23 money under the contract. See JPSC at 2.

## 24                  e. Masonry Sealer

25                  Globe spent \$116 on masonry sealer for the interior brick.  
26 Transcript at 16:13-19; Ex. 1 at 126. The masonry sealer was  
27 applied to the brick to stop the efflorescence caused by excessive  
28 moisture following the fire. Transcript at 16:20-25, 60:11-25.

1       The Court finds that the masonry sealer was a necessary  
2 repair cost. See JPCS at 2, 4. Globe is entitled to \$116.

3                     f. Demolition of Abandoned Gas and Water Lines

4       For \$252, Johnston Construction performed demolition of gas  
5 lines that were under Building 1 and that served Building 2.  
6 Transcript at 215:20-23; Chart. These lines were hanging from the  
7 crawl space, Transcript at 216:13-17, and were in the way of  
8 electrical work, id. at 216:17-18, 222:1-11. Using the crawl  
9 space was the most efficient method for the electrical rewiring.  
10 Id. at 222:8-11.

11       The Court finds that this cost was not necessary and  
12 therefore is not covered under the contract. Globe is not  
13 entitled to this money.

14                     g. Repairs for Roof Ponding

15       A ponding problem occurred on the roof of Building 1 as a  
16 result of the new parapet wall and cricket system. Ex. 4 at 303.  
17 Building 1's roof had only limited ponding problems before the  
18 fire because it was an essentially flat roof with a slope.  
19 Transcript at 280:19-281:6. The parapet that had existed was  
20 damaged and destroyed by the fire. Id. at 68:22-24.

21 Reconstruction of a parapet wall, particularly its bracing,  
22 blocked drainage from the roof. Transcript at 66:14-18, 67:2-6,  
23 69:2-5, 217:2-5. The ponding was so serious it caused water to go  
24 through skylights into Building 2. Id. at 63:12-64:14. The cost  
25 of these repairs was \$5,965. Chart.

26       The Court finds that the ponding problem was not a result of  
27 the fire. Therefore, this cost is not covered under the contract,  
28

1 JPCS at 2, and Globe is not entitled to reimbursement for these  
2 repairs.

3 h. Demolish and Remove Brick Footing

4 Johnston Construction demolished and removed brick footing  
5 from Building 2 and charged \$1,392. Ex. 1 at 146. This footing  
6 was very close to Building 1's east wall; removing it was required  
7 to perform repairs to the 2x6 laminated firewall. Transcript at  
8 211:10-18. Nationwide argues that the brick footing must have  
9 extended below the ground and, as a result, its removal required  
10 excavation. The Court is not persuaded.

11 The Court finds that Nationwide did not satisfy its burden of  
12 showing that the excavation exception applies. Thus, Globe is  
13 entitled to this \$1,392.

14 i. Painting Expense

15 In 2002, Building 1 had special interior painting with a lime  
16 peel texture and a light finish. Transcript at 212:8-12. The  
17 Court finds that special texturing existed because it finds Pete  
18 Johnston, Globe's general contractor, credible. The 2002 finish  
19 required at least one coat of primer and two finish coats, all  
20 sprayed and back rolled. Id. at 212:13-18. After the fire, the  
21 areas to be painted required much preparation, including cleaning,  
22 sanding and caulking. Id. at 370:14-18. Globe paid \$57,236, the  
23 amount charged for the painting. Id. at 270:15-17, 372:19-21.  
24 Nationwide estimated that the painting should have cost \$25,248.  
25 Id. at 270:18-20; Chart.

26 Because repainting these interior walls required the special  
27 treatment described by Globe, the Court finds that this expense  
28

1 was necessary. Globe is entitled to reimbursement for the money  
2 it paid.

3 j. Management Fee

4 Plaintiff Maxon claims a management fee in the amount of  
5 \$86,690. Transcript at 69:21-24. Maxon's compensation as project  
6 manager for Globe was part of his normal salary as an employee of  
7 Globe, Depo. Desig., Ex. A at 18:11-14, and Globe incurred no  
8 additional costs for Maxon's work as project manager following the  
9 fire, id. at 184:4-8.

10 The Court finds that no management fee was "actually spent"  
11 that was "necessary to repair" the damaged property. JPCS at 4.  
12 Globe is not entitled to this money.

13 In sum, Globe is entitled to \$329,038 in reimbursement for  
14 repairing Building 1. This sum is equal to the amount claimed  
15 (\$373,928) minus the agreed-upon non-covered costs (\$35,497) minus  
16 the disputed costs to which Globe is not entitled (\$9,393<sup>3</sup>).

17 II. Building 2

18 Building 2, which was destroyed in the fire, has not yet been  
19 rebuilt. Instead, Globe and Nationwide propose competing bids.  
20 Nationwide hired Charles Allen, who prepared bids to reconstruct  
21 Building 2. Allen Dec. at 2:13-15. Allen was willing to perform  
22 any work at the prices listed in his bids. Id. at 2:16-18.  
23 Nationwide's numbers on the Chart are equal to Allen's bid numbers  
24 multiplied by 1.2 to account for ten percent profit and ten  
25

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26 <sup>3</sup> As discussed above, this number includes \$1,889 paid for  
27 gas line installation, \$1,287 paid for rerouting electrical, \$252  
28 paid for demolishing a gas and water line and \$5,965 for repairing  
the roof ponding.

1 percent overhead. Transcript at 152:19-24, 294:15-18. Globe  
2 hired Les Charter to provide a cost estimate to reconstruct  
3 Building 2. Charter Dec. ¶ 6. The parties agreed to apply a  
4 multiplier of 1.088 to Charter's estimates so that Charter's  
5 profit and overhead percentages align with Allen's. Transcript at  
6 153:5-10. The parties do not dispute that several costs amounting  
7 to \$519,418 are due. Chart. The Court rules on the disputed  
8 costs below.

9                   a. Architecture/Engineering

10                  Globe's estimate is \$295,509. Ex. 9 at 285. This number is  
11 twelve percent of the total bid. Transcript at 156:8-11, 186:22-  
12 24. Charter testified that twelve percent is standard in the  
13 United States. Id. at 187:2-4. However, this percentage does not  
14 account for the difference in work required to rebuild a destroyed  
15 building rather than to build a new building. Id. at 157:10-13.  
16 Allen's bid for Nationwide is \$63,100. Allen Dec. at ALLCO 230.<sup>4</sup>

17                  The Court finds that Nationwide's price of \$63,100 is  
18 appropriate under the contract's definition of replacement cost.

19 See JPCS at 3.

20                   b. Excavation, Fill, Demolition

21                  Globe's estimate lists a price of \$27,125. The parties agree  
22 that this estimate breaks down as follows: \$2,851 for gravel  
23 excavation, \$2,685 for demolition and disposal of the perimeter  
24 foundation and \$21,600 for demolition and disposal of the slab and  
25

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26                  <sup>4</sup> Allen's original bid for this item was \$83,100. However,  
27 that bid included \$20,000 for geotechnical work, a cost the  
28 parties no longer dispute. See Chart. Charter's original bid  
separated geotechnical work from this cost. Ex. 9 at 285.

1 footings. Globe now agrees that it is not entitled to \$2,851 for  
2 gravel excavation, so its estimate is \$24,285. Nationwide Br. at  
3 5. Nationwide's bid price is \$17,762 for demolition of the slab  
4 alone. Allen Dec. at ALLCO 184.<sup>5</sup>

5 The Court finds that Nationwide did not satisfy its burden to  
6 show that demolition and disposal of the perimeter foundation  
7 constitutes excavation. Globe is entitled to the \$2,685.  
8 However, the Court finds that Globe's higher price for demolition  
9 of the slab is not necessary. See JPCS at 3. Thus, Nationwide's  
10 price of \$17,762 is appropriate. In sum, Globe is entitled to  
11 \$20,447 for this cost.

12           c. Utilities Hook-Up

13           Globe estimates that reconnecting power to Building 2 would  
14 cost \$81,132. See Ex. 9 at 285 (before 1.088 multiplier);  
15 Transcript at 295:17-23. This estimate is based on two premises:  
16 that Building 2 originally had 400 amps of power and that Pacific  
17 Gas & Electric requires Globe to connect at a new power source  
18 that did not exist before the fire. Globe Br. at 9; Reply Br. at  
19 5-6. \$38,175 of this sum is related to reconnecting to a new  
20 power source. Ex. 9 at 291. Nationwide estimates that the  
21 utilities hook-up would cost \$11,736. Transcript at 295:9-15;  
22 Allen Dec. at ALLCO 185 (before 1.2 multiplier). Its estimate is  
23 based on the premise that Building 2 had only 200 amps of power  
24 before the fire and that an undamaged power source is available.  
25 Transcript at 298:12-23.

26  
27           

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<sup>5</sup> The amount listed is \$14,802. This is before Allen's  
28 multiplier of 1.2 for profit and overhead was applied.

1       Regarding the amperage, the Court finds that Building 2  
2 originally had 400 amps, meaning no portion of Globe's estimate  
3 results from amperage additions. Id. at 229:9-10. The Court  
4 finds Russell Whittaker, the electrician who worked on Buildings 1  
5 and 3 after the fire, more credible than Allen on the issue of  
6 amperage.

7       Regarding the availability of the power source, the Court  
8 finds that Globe failed to meet its burden to prove that  
9 connecting to a new power source was "necessary" for replacement.  
10 JPCS at 3. Because Globe is not entitled to this portion of its  
11 estimate amount, it is entitled to \$42,957 for this cost.

12                  d. Brick at Entry

13       Globe estimates that this cost is \$4,837. Ex. 9 at 285  
14 (before 1.088 multiplier). Nationwide estimates that this cost is  
15 \$2,479. Allen Dec. at ALLCO 227 (before 1.2 multiplier).

16       Globe did not carry its burden to prove that its higher cost  
17 is necessary, particularly in light of Allen's testimony that he  
18 would be willing to do this work at his bid price. See JPCS at 3;  
19 Allen Dec. at 2:16-18. Globe is entitled to \$2,479 for this cost.

20                  e. Steel Vault and Door

21       Globe's estimate for this cost is \$25,509: \$17,743 for the  
22 steel vault and \$7,766 for the vault door. Ex. 9 at 285, 296  
23 (before 1.088 multiplier). Nationwide's estimate is \$17,208.  
24 Allen Dec. at ALLCO 210 (before 1.2 multiplier). Nationwide's  
25 estimate is based on a door size smaller than Globe's. Compare  
26 Ex. 9 at 296 to ALLCO 210.

27       Globe did not carry its burden to prove that its higher  
28 estimated cost is necessary. See JPCS at 3. Allen's estimate

1 contained notes for measurements, explaining that he had  
2 determined that those measurements were the maximum size possible  
3 based on the foundation measured at the site, and on a floor plan  
4 and photos. Allen Dec. at ALLCO 210. Charter, on the other hand,  
5 got his dimensions from discussions and pictures. He does not  
6 recall more specifically how he calculated the dimension of the  
7 door. Transcript at 163:25-164:7. Therefore, Globe is entitled  
8 to Allen's estimate of \$17,208 for this cost.

9 f. Rough Lumber

10 Globe estimates \$588,696 for this cost. Ex. 9 at 285 (before  
11 1.088 multiplier). This estimate includes substantial amounts of  
12 old growth redwood. See id. at 300-05. Nationwide estimates  
13 \$163,370. Chart.

14 The Court finds that old growth redwood is not necessary to  
15 replace Building 2 with a building of equivalent utility, using  
16 modern materials and current standards, design and layout. See  
17 Depo. Desig., Ex. A at 114:2-8 ("my consultants say that the cost  
18 to do that out of wood and comparable materials and for a modern  
19 day structure, it can't be done. So we're using a steel and the  
20 componentry there to deliver the same sense of quality, the  
21 esthetics, sound deadening, all those things, we can achieve with  
22 a steel structure much more economically."). Therefore, Globe is  
23 entitled to Allen's bid of \$163,370 for rough lumber.

24 g. Redwood Floor Under Concrete Slab

25 Globe estimates that it needs \$62,872 for this cost. Ex. 9  
26 at 285 (before 1.088 multiplier).

27 The Court finds that Globe did not carry its burden to prove  
28 that there was a redwood floor under the concrete slab that

1 warrants replacement. See JPCS at 3. Globe is entitled to no  
2 money for this cost.

3 h. 1x8 Redwood Shiplap Siding

4 Globe estimates it needs \$49,903 for 1x8 redwood shiplap  
5 siding on three exterior walls. Ex. 9 at 285 (before 1.088  
6 multiplier). Before the fire, there had been exposed redwood  
7 shiplap on the north side of the building, Transcript at 84:22-  
8 85:1, and redwood shiplap siding underneath a stucco exterior on  
9 the south and west walls, id. at 85:2-4. Globe's bid includes all  
10 three walls and was priced at \$8.88 per square foot. Ex. 9 at 285  
11 (before 1.088 multiplier). Nationwide's bid is for \$9,939, based  
12 on a \$5.93 per square foot rate, and includes redwood shiplap only  
13 for the north wall. Allen Dec. at ALLCO 226 (before 1.2  
14 multiplier).

15 The Court finds that unexposed redwood is not included within  
16 the measure of replacement cost under the contract. See JPCS at  
17 4. Further, Globe did not carry its burden to prove that its  
18 higher price per square foot was necessary or of comparable  
19 quality to the pre-fire exposed redwood shiplap. Therefore, Globe  
20 is entitled only to Nationwide's bid of \$9,939.

21 i. Main Stairway North End

22 Globe estimates that it would take \$24,178 to reconstruct  
23 this stairway. Ex. 9 at 285 (before 1.088 multiplier). Charter  
24 based that estimate on eyewitness accounts of the size and  
25 finishes. Transcript at 172:24-173:2. Nationwide's bid is  
26 \$18,120. Allen Dec. at ALLCO 191-92 (before 1.2 multiplier).

27

28

1       Globe failed to carry its burden to prove that its higher  
2 cost is necessary for replacement. Globe is entitled only to  
3 \$18,120 for the stairway.

4                  j. Open Web Pitched Trusses

5       Globe estimates that it will need \$25,629 for open web  
6 pitched trusses. Ex. 9 at 285 (before 1.088 multiplier).  
7 Nationwide estimated that they would cost \$21,188. Chart;  
8 Nationwide Br. at 16. Nationwide points to no evidence in the  
9 record that explains its amount.

10      Globe is entitled to the full amount of its estimate of  
11 \$25,629.

12                  k. Rough Hardware

13      Globe estimates that it will need \$17,660 for rough hardware.  
14 Ex. 9 at 285 (before 1.088 multiplier). Charter typically uses a  
15 five percent measure but, where materials are more expensive, he  
16 lowers that number to three percent, which is what he did here.  
17 Transcript at 173:21-174:3. Nationwide estimates that it would  
18 cost \$10,565. Chart; Nationwide Br. at 17. Nationwide points to  
19 no evidence in the record that explains its amount.

20      Globe is entitled to the full amount of its estimate of  
21 \$17,660.

22                  l. Doors and Frames

23      Globe estimates \$50,909 for doors and frames. Ex. 9 at 285  
24 (before 1.088 multiplier). Charter's bid is based on prior  
25 projects he had worked on. Transcript at 176:12-18. He estimates  
26 that installing the doors would take eight hours per door, at  
27 forty dollars per hour. Id. at 177:17-178:7. For Nationwide,  
28 Allen estimates \$19,238 for the doors and frames. Chart. Allen's

1 estimate is based on pre-hung, less expensive doors that, he  
2 estimates, take three hours to install. Transcript at 333:7-20;  
3 Allen Dec. at 10:22-26.

4       Globe failed to carry its burden to prove that its higher  
5 cost is necessary for replacement. Globe is entitled to  
6 Nationwide's estimate of \$19,238.

7           m. Windows Custom Redwood

8       Globe's estimate for this cost is \$70,358. Ex. 9 at 286  
9 (before 1.088 multiplier). Charter received this price from a  
10 subcontractor who would replicate the window frames in  
11 photographs. Nationwide's estimate is \$40,615. Chart. Allen's  
12 bid also relies on the photographs. Transcript at 334:21-24.  
13 Allen's testimony is credible because he was willing to perform  
14 the work for his bid price. See Allen Dec. at 2:16-18

15       Globe failed to carry its burden to prove that its higher  
16 cost is necessary for replacement. Globe is entitled only to  
17 Nationwide's estimate of \$40,615.

18           n. Skylights

19       Globe's estimate for this cost is \$3,869. Ex. 9 at 286  
20 (before 1.088 multiplier). Nationwide's is \$1,968. Allen Dec. at  
21 ALLCO 228 (before 1.2 multiplier).

22       Globe failed to carry its burden to prove that its higher  
23 cost is necessary for replacement. Globe is entitled to  
24 Nationwide's estimate of \$1,968.

25           o. Lath and Plaster

26       Globe's estimate for this cost is \$191,488. Ex. 9 at 286  
27 (before 1.088 multiplier). This estimate is based on the premise  
28 that 19,800 square feet require lath and plaster, id., at a price

1 of slightly more than \$9.67 per square foot after the 1.088  
2 multiplier. Nationwide's estimate is \$86,016, which includes  
3 \$65,520 for 12,847 square feet of lath and plaster, Chart, and  
4 \$20,496 for 8,867 square feet of sheetrock and texturing,  
5 Nationwide Br. at 19 & n.5. This amounts to slightly more than  
6 \$5.10 per square foot after the 1.2 multiplier. The Court finds  
7 that 19,800 square feet of lath and plaster is required;  
8 Nationwide presented no evidence at trial explaining why sheetrock  
9 would suffice to replace lath and plaster in certain areas under  
10 the replacement cost measure.

11       Globe failed to carry its burden to prove that its higher  
12 cost per square foot of lath and plaster is necessary for  
13 replacement purposes. Globe is entitled to Nationwide's post-  
14 multiplier pricing for 19,800 square feet, which totals \$100,980.

15                   p. Sport Flooring

16       Globe estimates that replacing a sprung dance floor will cost  
17 \$86,188. Ex. 9 at 286 (before 1.088 multiplier). The sprung  
18 dance floor covered 3,516 square feet of Building 2's second  
19 floor. Ex. 9 at 313. The price per square foot is \$24.513 after  
20 the 1.088 multiplier. Nationwide's estimate is \$18,748 for sport  
21 flooring for the 934 square feet more recently used as a martial  
22 arts studio. Chart; Docket No. 82-1.

23       Following a fire in 1976, the sprung dance floor was covered  
24 in plywood. Transcript at 138:7-9. Immediately before the 2006  
25 fire, Building 2's second floor had been used as a martial arts  
26 studio. Id. at 41:14-21. There was a partition between the  
27 action mat and the seating area, which was carpeted. Id. at 42:6-  
28 16. On the other side of the martial arts studio was a storage

1 area. Id. at 42:17-25, 116:3-6. That wall had been there for at  
2 least fifteen years. Id. at 43:1-7. See also Ex. 56 at 7.

3       Globe failed to meet its burden to prove that all the square  
4 footage of sprung dance floor is required to use it for the same  
5 purpose as before the fire. See JPCS at 3. Globe is entitled to  
6 934 square feet of sprung dance floor, Chart, at Globe's square  
7 footage cost, or \$22,895.

8           q. Resilient Floor

9       Globe's estimate for this cost is \$5,241. Ex. 9 at 286  
10 (before 1.088 multiplier). Nationwide's is \$3,535.

11       Because Nationwide presented no evidence at trial supporting  
12 its calculation, the Court finds that Globe is entitled to its  
13 estimate of \$5,241.

14           r. Fiber Reinforced Plastic Panels

15       Globe estimates that \$7,031 will be required to replace 1,454  
16 square feet of Fiber Reinforced Plastic (FRP) panels that existed  
17 in the butcher area in Building 2. Ex. 9 at 286 (before 1.088  
18 multiplier). Nationwide estimates that \$3,365 will be required to  
19 replace 1,304 square feet of FRP. Allen Dec. at ALLCO 205, 212,  
20 214, 218, 219 (before 1.2 multiplier).

21       Globe failed to carry its burden to prove that its higher  
22 cost is necessary for replacement. Globe is entitled to  
23 Nationwide's price of \$3,365.

24           s. Plumbing, Sinks, Floor Drain, French Drain, Restrooms

25       Globe's estimate is \$84,622. Ex. 9 at 286 (before 1.088  
26 multiplier), 323. Nationwide's estimate is \$74,186, including  
27 \$7,920 for underground sewer piping, which Nationwide argues is  
28 not covered. Nationwide Br. at 21.

1       The Court finds that Globe is entitled to the full amount of  
2 its estimate: \$84,622. Nationwide has not presented evidence that  
3 undercuts the necessity of any of the line items in Globe's  
4 estimate.

5                  t. Electrical

6       Globe's revised estimate is lower than the one in its  
7 original estimation chart. Globe's price of nine dollars per  
8 square foot remains the same, see Ex. 9 at 324, but it revises its  
9 square footage to 9,700 square feet. The Court finds that Globe's  
10 estimate, based on this information, is \$94,982. Nationwide's  
11 estimate is \$63,283. Chart; Allen Dec.

12      The Court finds that Globe is entitled to its revised  
13 estimate of \$94,982. It is not persuaded otherwise by Allen's  
14 general testimony regarding building types.

15                  u. Site Fencing

16       Globe estimates that it needs \$9,450 for temporary site  
17 fencing. Ex. 6 at 21-22. Fencing is costing Globe \$150 per  
18 month. See id. Nationwide's bid lists security fencing for the  
19 first eight months of work, but lists no price. Allen Dec. at  
20 ALLCO 184.

21      The Court finds that Globe is entitled to eight months of  
22 fencing at \$150 per month, or \$1,200. Globe has not shown that  
23 fencing in excess of eight months is necessary to replace the  
24 building.

25                  v. Builder's Risk Insurance

26       Nationwide's numbers, based on Allen's bids, include ten  
27 percent for overhead. This overhead amount includes insurance.  
28 Transcript at 344:11-16. Because Globe applied a multiplier to

1 Charter's estimates to match Nationwide's estimates, the Court  
2 finds that the multipliers added and used throughout trial include  
3 this form of insurance. For this reason, Globe is not entitled to  
4 any additional money.

5 w. General Liability Insurance

6 The Court finds that the multipliers used by the parties to  
7 align their estimates for overhead and profit purposes include  
8 this form of insurance. See Transcript at 344:11-16. For this  
9 reason, Globe is not entitled to any additional money.

10 x. Meat Lockers and Freezers

11 There is no mention of meat lockers and freezers in any of  
12 the direct testimony submitted to the Court or in any of the pre-  
13 trial papers, such as the disputed items chart submitted before  
14 trial. Nor is there an entry for them in Charter's bid. See Ex.  
15 9. Because Globe did not raise this issue in its direct case, the  
16 Court finds that it may not do so now. Globe is not entitled to  
17 any money for this item.

18 y. Depreciation Holdback

19 The parties agree that Globe will be entitled to a  
20 depreciation holdback of \$92,035 once the building is completed.

21 In sum, based on the Court's resolution of each of the  
22 disputed items, Globe is entitled to \$1,275,433 for Building 2.  
23 This sum does not include the holdback that is not yet owed.

24 III. Building 3

25 a. Roof

26 Globe paid \$13,966 to Darin Thomsen Construction for re-  
27 roofing Building 3. Ex. 2 at 160. Because the Court finds  
28

1 Thomsen to be credible, it also finds that roof replacement was  
2 necessary. Globe is entitled to the full amount it paid.

3           b. Gas Line Installation

4           This cost is the other half of the gas line installation cost  
5 associated with both Building 1 and Building 3. As the Court  
6 found for Building 1, two-thirds of this amount is not owed  
7 because trenching is not covered under the contract. See JPCS at  
8 3. Globe is, however, entitled to \$944, the other third.

9           c. Project Management

10          As with Building 1, the Court finds that no management fee  
11 was "actually spent" that was "necessary to repair" the damaged  
12 property. JPCS at 4. Globe is not entitled to this money.

13          In sum, Globe is entitled to \$14,910 for Building 3 based on  
14 the Court's findings concerning the parties' disputed costs.

15          IV. Pre-judgment Interest

16          The Court concludes that damages for a breach of an  
17 obligation to pay money "is deemed to be the amount due by the  
18 terms of the obligation, with interest thereon." Cal. Civ. Code  
19 § 3302; see also id. § 3287(a). The time for interest begins to  
20 run when the defendant knew the amount owed or could have computed  
21 it from reasonably available information. Chesapeake Indus., Inc.  
22 v. Togova Enters., Inc., 149 Cal. App. 3d 901, 907. Where an  
23 insurer contests its obligation to pay or the amount it owes,  
24 interest is calculated from the date the insurer was obliged to  
25 pay under its policy. See Oil Base, Inc. v. Transp. Indem. Co.,  
26 148 Cal. App. 2d 490, 492 (1957).

27          The Court finds that Globe is entitled to pre-judgment  
28 interest of ten percent per annum on the unpaid amounts for

1 Buildings 1 and 3 from December 10, 2007 and on the unpaid amounts  
2 for Building 2 from January 31, 2013. Cal. Civ. Code § 3289(b).

3 CONCLUSION

4 Globe is entitled to \$329,038 for the disputed costs  
5 attributable to Building 1, plus prejudgment interest of ten  
6 percent per annum from December 10, 2007. Globe is entitled to  
7 \$1,275,433 for Building 2, which includes the costs listed in the  
8 Chart as undisputed, plus prejudgment interest of ten percent per  
9 annum from January 31, 2013 on the amount Nationwide has not yet  
10 paid. It does not include the depreciation holdback of \$92,035 to  
11 which the parties agree Globe will be entitled once the building  
12 is completed. Globe is entitled to \$14,910 for Building 3, plus  
13 prejudgment interest of ten percent per annum from December 10,  
14 2007.

15 Within fourteen days of this order, the parties shall submit  
16 a joint proposed judgment that clearly states in dollar amounts  
17 how much money Nationwide owes Globe, by building, based on the  
18 findings in this order. The dates and rates of interest should be  
19 stated. The judgment should also account for the \$92,035 holdback  
20 amount owed. If the parties cannot agree, they must submit  
21 separate proposed judgments with an explanation of the  
22 differences.

23  
24 IT IS SO ORDERED.

25 Dated: August 4, 2016

  
26 CLAUDIA WILKEN  
United States District Judge

27  
28